

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

15-P-692

STONY BROOK COMMONS

vs.

PATRICIA BELLFIELD.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, Stony Brook Commons (landlord), brought this summary process action, seeking to evict the defendant, Patricia Bellfield, for cause other than nonpayment of rent. A Housing Court judge allowed the landlord's motion for summary judgment on its claim for possession and issued a judgment. The same judge subsequently denied Bellfield's motion to amend findings, for new trial, and for relief from judgment (postjudgment motion). We affirm.

We review a grant of summary judgment de novo. Lind v. Domino's Pizza LLC, 87 Mass. App. Ct. 650, 653 (2015). We review the order denying Bellfield's postjudgment motion for abuse of discretion. See Tai v. Boston, 45 Mass. App. Ct. 220, 224-225 (1998).

As an initial matter, we observe that Bellfield has failed to address those standards of review and her appellate arguments do not meet the standards set forth in Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975). These failures alone justify a decision in favor of the landlord. However, even if Bellfield's claims were properly argued, she fares no better as there is no merit to any of her assertions.

In granting summary judgment, the judge ruled that, as matter of law, Bellfield was in material noncompliance with the terms of the assisted housing lease (lease) based on her chronic late payments.<sup>1</sup> There was no error.

The undisputed facts demonstrate that Bellfield made late rent payments each month between September, 2013 and June, 2014. As the judge noted in analyzing the issue of adverse financial impact, the landlord was required to repeatedly serve Bellfield with notices to quit in an effort to collect her monthly rent. In addition, the landlord was required to retain an attorney to bring the eviction action. Bellfield failed to rebut, with

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<sup>1</sup> Under paragraphs 3.a and 3.b of the lease, Bellfield's share of the rent was due on or before the first of every month. Pursuant to paragraph twenty of the lease, the landlord may terminate the lease if Bellfield engaged in material noncompliance with the lease's terms. As defined by the lease, material noncompliance included "[r]epeated minor violations of the lease that . . . [h]ave an adverse financial effect on the project." Each "payment of rent . . . after the due date but within the grace period permitted under State law constitute[d] a minor violation" pursuant to the lease.

admissible evidence, the landlord's showing of her material noncompliance with the lease. See Fortenbacher v. Commonwealth, 72 Mass. App. Ct. 82, 85 (2008).

The judge also properly rejected Bellfield's legal defenses. First, she claimed that "no actual known rent payment" was due in 2013 and 2014 because she had appealed the Boston Housing Authority's (BHA) updated determinations of her share of the contract rent under the lease. As the judge ruled, consistent with the terms of the lease, Bellfield's challenge to the BHA's redeterminations did not toll or stay her duty to pay her share of the rent to the landlord in the amount calculated by BHA.<sup>2</sup>

Second, to the extent that Bellfield sought protection from eviction under the cure provision of G. L. c. 186, § 11, that statute is inapplicable here because the eviction proceeding was for cause other than nonpayment of rent. Given the landlord's reservation of its rights in the notice to quit, Bellfield's tenancy was not reinstated by the landlord's subsequent acceptance of use and occupancy payments. Where Bellfield did

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<sup>2</sup> Paragraph 3.b of the lease provided, as herein relevant, that "[i]n the event the [t]enant [r]ent is changed by the BHA, the [t]enant shall pay that amount on or before the first of every month." The BHA business records subpoenaed into court at the judge's direction confirmed that the amounts of tenant rent sought by the landlord for the relevant time periods were the same amounts set by the BHA. Moreover, Bellfield's rent payments in the amount she believed was due were all late.

not request reasonable accommodation during the summary judgment proceedings, the judge did not err by failing to consider one.

The same judge who decided the summary judgment motion had the opportunity to hear arguments for and against Bellfield's motion for postjudgment relief. As Bellfield's attorney conceded at the hearing, Bellfield did not raise the issue of notice to the BHA during the summary judgment proceedings. In light of the delay and the evidence that a timely copy was sent to the BHA, we are not persuaded that the judge's ruling amounted to an abuse of discretion.<sup>3</sup> See Chiu-Kun Woo v. Moy, 17 Mass. App. Ct. 949, 949-950 (1983).

To the extent that we do not address the defendant's other contentions, "they 'have not been overlooked. We find nothing

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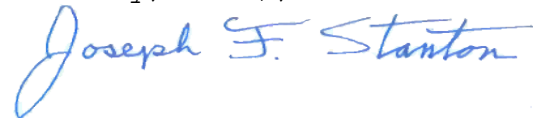
<sup>3</sup> The materials provided by the landlord were not necessarily in dispute with the affidavit from the BHA leasing officer provided by Bellfield.

in them that requires discussion.'" Department of Rev. v. Ryan R., 62 Mass. App. Ct. 380, 389 (2004), quoting from Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

Judgment affirmed.

Order dated November 15,  
2014, affirmed.

By the Court (Green, Vuono &  
Henry, JJ.<sup>4</sup>),



Clerk

Entered: May 17, 2016.

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<sup>4</sup> The panelists are listed in order of seniority.